

IN THE COURT OF APPEALS FOR THE
SECOND COURT OF APPEALS DISTRICT OF TEXAS

EX PARTE

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FILED IN
2nd COURT OF APPEALS
FORT WORTH, TEXAS

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DEBRA SPISAK

NO. 02-17-00188-CR^{Clerk}

CHARLES BARTON

*APPEALED FROM CAUSE NUMBER 1314404 IN THE COUNTY
CRIMINAL COURT NO. 8 OF TARRANT COUNTY, TEXAS; THE HONORABLE
CHARLES L. VANOVER, PRESIDING.*

**UNOPPOSED FIFTH MOTION FOR EXTENSION OF TIME
TO FILE STATE'S BRIEF**

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, the State of Texas, by and through Sharen Wilson, Criminal
District Attorney of Tarrant County, and files its fifth unopposed motion to file the
State's brief in this appeal and for cause would respectfully show the following:

I.

The trial court was the County Criminal Court No. 8 of Tarrant County, Texas.
The style and number of the case in the trial court was *The State of Texas v. Charles
Barton*, No. 1314404.

II.

Appellant is charged with nine counts of harassment under Texas Penal Code
section 42.07(a)(7). CR 1: 5–6 (Information). On August 8, 2016, Appellant filed a

motion to quash the information, arguing that Section 42.07(a)(7) was unconstitutional and that the information did not provide Appellant proper notice of the allegations against him. CR 1: 45–47 (Motion to Quash). Following the trial court’s denial of Appellant’s motion to quash, Appellant filed his Original Application for Writ of Habeas Corpus based on Article 11.09 of the Texas Code of Criminal Procedure, arguing once again that Section 42.07(a)(7) was unconstitutional. CR 1: 49–52 (Application). On May 18, 2017, the trial court denied the Appellant’s Application. CR 1: 63 (Order).

Appellant posted bond and is not incarcerated.

III.

The appeal was perfected in this case on June 22, 2017, when the notice of appeal was filed.

IV.

The Court granted each of Appellant’s motions for extension of time to file his brief, which were filed on August 4, 2017 (requesting a 60-day extension), October 4, 2017 (requesting a 60-day extension), November 30, 2017 (requesting a 60-day extension), and January 30, 2018 (requesting a 60-day extension). On March 2, 2018, Appellant filed his brief. Appellant requested oral argument.

On March 22, 2018, the Court granted the State’s first motion for extension

(requesting a 30-day extension). On April 25, 2018, the Court granted the State's second motion for extension (requesting a 30-day extension). On May 23, 2018, the Court granted the State's third motion for extension (requesting a 30-day extension). On June 19, 2017, the Court granted the State's fourth motion for extension (requesting a 14-day extension).

V.

The current deadline for filing the State's brief is this Friday, June 6, 2018.

VI.

Counsel for the State has had the following obligations that have prevented him from completing this brief by his current deadline:

1. The last two weeks, State's Counsel has missed work because his daughter had strep throat and a severe ear infection.
2. Counsel filed the State's response to Appellant's second "Motion for Emergency Relief" in *Jason Eugene Arnold v. State*, No. 02-18-00022-CR, on June 15, 2018.
3. Counsel filed the State's brief in *State v. Jaleel Franklin*, No. 02-17-00113-CR, in the Second Court of Appeals, on June 6, 2018.
4. Counsel filed the State's response to Applicant's Second Section 11.07 Writ of Habeas Corpus Application in *Ex Parte Kevin J.*

Jones, No. C-432-W011301-1469217-B, on May 30, 2018.

5. Counsel has been working on the State's response to the petition for review in *In re G.V., III., and G.V., Children*, No. 18-0232, in the Supreme Court of Texas.
6. Counsel filed State's response to Appellant's first "Motion for Emergency Relief" in *Jason Eugene Arnold v. State*, No. 02-18-00022-CR, on May 23, 2018.
7. Counsel has been working on the State's findings of fact and conclusions of law in response to Applicant's 11.07 applications for writ of habeas corpus in *Ex parte Paul Sulak* (Case Nos. C-372-W011219-1348546-A and C-372-W011220-1348549-A).
8. Counsel has been working on the State's findings of fact and conclusions of law in response to Applicant's 11.07 application for writ of habeas corpus in *Ex parte Charles Ray Diaz* (Case No. C-396-W011290-1350578-A).
9. Counsel has been working on the State's response to Applicant's 11.07 application for writ of habeas corpus in *Ex parte Joe Robert Patron* (Case No. C-4-W011328-0530894-A).
10. Counsel has been working on the State's brief in *Eron Spivey v.*

State, No. 02-17-00238-CR, answering three points of error based on Appellant's conviction for capital murder.

VII.

The State requests that the Court extend the deadline for filing its brief for 21 days until July 27, 2018. Counsel previously thought that he would only need an additional 14 days (*See State's Fourth Unopposed Motion*) to finish his brief before his daughter became sick. However, because of his daughter's illness, he has had to miss work to take care of her. This extension is not requested for purposes of delay. Rather, the State needs more time to adequately address the multiple points of error in this appeal that challenge the constitutionality of the Texas harassment statute.

WHEREFORE, PREMISES CONSIDERED, the State of Texas prays that this Court grant this Fifth Unopposed Motion for Extension of Time to File State's Brief and extend time for filing of the brief to July 27, 2018.

Respectfully submitted,

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/s/ Steven Baker
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CERTIFICATE OF CONFERENCE

I, Steven Baker, Assistant Criminal District Attorney, hereby certify that I contacted Appellant's attorney, Tobias Lopez, on July 5, 2018, explained that I planned to file for this extension, and inquired whether Mr. Lopez or Ed Jones, who is also representing Appellant on appeal, had any objections. Mr. Lopez indicated that he and Mr. Jones were unopposed to this motion.

/s/ Steven Baker
STEVEN BAKER

CERTIFICATE OF SERVICE

A true copy of the State's motion for extension of time has been electronically served on opposing counsel, Ed Jones and Tobias Lopez, at the Edward G. Jones Law Firm, 1319 Ballinger Street, Fort Worth, Texas, 76102 (edjonesatty@gmail.com and tobiasxavierlopez@gmail.com), on this, the 5th day of July, 2018.

/s/ Steven Baker
STEVEN BAKER